IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID G. PEREZ	:	**CIVIL ACTION**
	:	
v.	:	
	:	
WILLIAM YOUNG	:	**NO. 99-2876**

MEMORANDUM ORDER

Plaintiff asserts a claim under 42 U.S.C. § 1983 for an alleged violation of his Eighth Amendment rights. Presently before the court is defendant's Motion to Dismiss for failure to state a claim.

As alleged in the complaint, the pertinent facts are as follow. On March 9, 1999, plaintiff was transported by Officers Jackson and William Young from SCI Chester, where he was housed, to a doctor's appointment in Norristown. A prison doctor had informed defendants that plaintiff should be restrained with plastic rather than regular metal handcuffs because of a sensitive condition in his hands. Officer Young nevertheless placed plaintiff in regular handcuffs during the two hours he was in intake prior to leaving for Norristown and he was kept in these cuffs during his transport to and from Norristown, including a fifteen minute personal stop at a bank where defendant withdrew some money. Plaintiff constantly complained to defendants before and after leaving the prison that the handcuffs "hurt" his hands and were causing "much pain." The defendants did nothing in response to these complaints. During

the transport back to SCI Chester, plaintiff asked to have the handcuffs removed. The officers did not do so.

The unnecessary and wanton use of force by prison officials to inflict pain upon a prisoner constitutes cruel and unusual punishment in violation of the Eighth Amendment. See Hudson v. McMillian, 503 U.S. 1, 3 (1992); Whitley v. Albers, 475 U.S. 312, 319 (1986). To sustain an Eighth Amendment claim, a plaintiff must show that the defendant acted with a sufficiently culpable state of mind and that the alleged wrongdoing was sufficiently serious to establish a constitutional violation. Hudson, 503 U.S. at 7.

In addressing a claim for use of excessive force, the focus is on whether force was applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically to cause harm. Hudson, 503 U.S. at 6-7. Factors to be considered include the extent of injury suffered by an inmate, the threat reasonably perceived by responsible officers, the need for application of force, the relationship between that need and the force used and any attempt realistically to avert the use of force. Id. at 7.

There is no Eighth Amendment violation for a de minimis use of physical force, provided such force is not "repugnant to the conscience of mankind." Hudson v. McMillian, 503 U.S. at 9-10. "When prison officials maliciously and sadistically use

force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is evident." Id. at 9.

Thus, "the absence of significant resulting injury is not a per se reason for dismissing a claim based on alleged wanton and unnecessary use of force against a prisoner." Brooks v. Kyler, 204 F.3d 102, 108 (3d Cir. 2000). The "use of wanton, unnecessary force resulting in severe pain" is actionable. Id. at 109.

The transport of prisoners outside of a correctional institution poses security risks which clearly justify the use of handcuffs or other appropriate restraints. See, e.g., Fulford v. King, 692 F.2d 11, 13-14 (5th Cir. 1982). This, however, does not end the matter.

From plaintiff's allegations and inferences reasonably drawn therefrom, it appears that defendant deliberately disregarded the direction of a prison doctor to use a type of handcuff which would not exacerbate a condition of his hands making him unduly sensitive and ignored his complaints of pain while he was in intake prior to leaving the institution. One can reasonably infer that the prison doctor would not have prescribed the use of plastic handcuffs unless they were in fact available. It is possible that defendant can show such cuffs are not sufficiently secure or reliable for a trip outside the prison,

but plaintiff need not allege otherwise to survive a motion to dismiss.

The cases relied on by defendant are unavailing.

Chambers v. Simonet, 56 F.3d 77 (10th Cir. 1995) is an unpublished summary affirmance of the dismissal of a § 1983 Eighth Amendment claim. The plaintiff had a litany of complaints about the safety and comfort of his transportation by van between prisons including hard seats, crowding, sporadic air conditioning, an absence of safety belts and "extremely tight" shackles and cuffs.

Wesson v. Oglesby, 910 F.2d 278 (5th Cir. 1990), decided prior to Hudson, affirmed the dismissal of an excessive force claim because of the absence of an allegation of "serious or permanent injury." Id. at 283.

Defendant miscites Pearl v. Rhodes, 711 F.2d 868 (8th Cir. 1983) for the proposition that "swelling and bleeding as a result of tight handcuffs is not a serious injury and is not an Eighth Amendment violation." In fact, the Court affirmed a grant of summary judgment on the ground that the allegations regarding tight handcuffs were belied by the plaintiff's admission "the cuffs were loose enough for a finger to be placed between the cuffs and his wrist."

Knox v. McGinnis, 998 F.2d 1405 (7th Cir. 1993) involved a grant of summary judgment on the ground of qualified

immunity. In discussing the use of the challenged restraint, the Court quoted from Fulford to emphasize the lack of evidence that this restraint caused significant pain or that the discomfort which did occur resulted "either deliberately, as punishment, or mindlessly, with indifference to the prisoners' humanity." Id. at 1410.

Also, the issue presented here is not the need for a type of restraint which is inherently discomforting, but the unnecessary use of a painful means of restraint when an alternative is available and specifically prescribed by a prison physician.

Defendant's reliance on 42 U.S.C. § 1997e(e) is also unavailing. Physical pain wantonly inflicted in a manner which violates the Eighth Amendment is a sufficient "physical injury" to permit recovery under § 1983. Plaintiff also has not pled a claim for emotional or mental injury.

It does not appear beyond doubt from the face of the complaint that plaintiff can prove no set of facts consistent with his allegations which would entitle him to relief.

ACCORDINGLY, this day of June, 2000, **IT IS HEREBY ORDERED** that defendant's Motion to Dismiss (Doc. #9) is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.